

underwriting risk is assumed and the underwriting fees are booked. Consequently, any banking organization that wishes to engage in such activity must either be a financial holding company under the GLB Act or have authority to engage in underwriting activity under section 4(c)(8) of the BHC Act (so-called “section 20 authority”). Revenue generated by underwriting bank-ineligible securities in such transactions should be attributed to the section 20 company for those foreign banks that operate under section 20 authority.

[Reg. K, 68 FR 7899, Feb. 19, 2003]

## PART 212—MANAGEMENT OFFICIAL INTERLOCKS

Sec.

212.1 Authority, purpose, and scope.

212.2 Definitions.

212.3 Prohibitions.

212.4 Interlocking relationships permitted by statute.

212.5 Small market share exemption.

212.6 General exemption.

212.7 Change in circumstances.

212.8 Enforcement.

212.9 Effect of Interlocks Act on Clayton Act.

AUTHORITY: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

SOURCE: 61 FR 40302, Aug. 2, 1996, unless otherwise noted.

### §212.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this part is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anti-competitive effect.

(c) *Scope.* This part applies to management officials of state member banks, bank holding companies, and their affiliates.

### §212.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. “Immediate family” means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship based on common ownership does not exist if the Board determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the Board considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person’s ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous and adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more